

# Senate File 559 - Reprinted

SENATE FILE \_\_\_\_\_  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1197)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to cemetery and funeral merchandise, funeral  
2 services, and cemeteries and providing fees and penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1191SV 82  
5 av/gg/14

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1 1 DIVISION I  
1 2 CEMETERY AND FUNERAL MERCHANDISE,  
1 3 FUNERAL SERVICES, AND CEMETERIES == REGULATION  
1 4 Section 1. Section 22.7, Code 2007, is amended by adding  
1 5 the following new subsection:  
1 6 NEW SUBSECTION. 58. Information filed with the  
1 7 commissioner of insurance pursuant to sections 523A.204 and  
1 8 523A.502A.  
1 9 Sec. 2. Section 523A.102, subsection 6, Code 2007, is  
1 10 amended to read as follows:  
1 11 6. "Commissioner" means the commissioner of insurance or  
1 12 the ~~deputy administrator authorized in section 523A.801 to the~~  
~~1 13 extent the commissioner delegates functions to the deputy~~  
~~1 14 administrator commissioner's designee.~~  
1 15 Sec. 3. Section 523A.102, subsection 11, Code 2007, is  
1 16 amended by striking the subsection.  
1 17 Sec. 4. Section 523A.102, Code 2007, is amended by adding  
1 18 the following new subsection:  
1 19 NEW SUBSECTION. 26A. "Sales agent" means a person,  
1 20 including an employee, who is authorized by a seller to sell  
1 21 cemetery merchandise, funeral merchandise, funeral services,  
1 22 or a combination thereof, on behalf of the seller.  
1 23 Sec. 5. Section 523A.102, subsection 27, Code 2007, is  
1 24 amended to read as follows:  
1 25 27. "Seller" or "preneed seller" means a person doing  
1 26 business within this state, including a person doing business  
1 27 within this state who sells insurance, who advertises, sells,  
1 28 promotes, or offers to furnish cemetery merchandise, funeral  
1 29 merchandise, funeral services, or a combination thereof when  
1 30 performance or delivery may be more than one hundred twenty  
1 31 days following the initial payment on the account whether the  
1 32 transaction is completed or offered in person, through the  
1 33 mail, over the telephone, by the internet, or through any  
1 34 other means of commerce. "Seller" or "preneed seller"  
1 35 includes any person performing any term of a purchase  
2 1 agreement executed within this state, and any person  
2 2 identified under a burial account as the provider of cemetery  
2 3 merchandise, funeral merchandise, funeral services, or a  
2 4 combination thereof.  
2 5 Sec. 6. Section 523A.201, subsection 3, Code 2007, is  
2 6 amended to read as follows:  
2 7 3. If a purchase agreement for cemetery merchandise,  
2 8 funeral merchandise, funeral services, or a combination  
2 9 thereof provides that payments are to be made in installments,  
2 10 the seller shall deposit eighty percent of each payment in the  
2 11 trust fund until the full amount required to be placed in  
2 12 trust has been deposited. If the purchase agreement is  
2 13 financed with or sold to a financial institution, the purchase  
2 14 agreement shall be considered paid in full and the trust  
2 15 requirements shall be satisfied within fifteen days after the  
2 16 ~~close of the month in which the~~ seller receives funds from the  
2 17 financial institution.  
2 18 Sec. 7. Section 523A.201, subsection 5, Code 2007, is

2 19 amended by striking the subsection and inserting in lieu  
2 20 thereof the following:

2 21 5. Unless a seller deposits all of each payment in a trust  
2 22 fund that meets the requirements of this section and section  
2 23 523A.202, the seller shall have a fidelity bond or similar  
2 24 insurance in an amount of not less than fifty thousand dollars  
2 25 to protect against the loss of purchaser payments not placed  
2 26 in trust within the time period required by this section and  
2 27 section 523A.202. The commissioner may require a greater  
2 28 amount as the commissioner determines is necessary. If the  
2 29 seller changes ownership, the fidelity bond or similar  
2 30 insurance shall continue in force for at least one year after  
2 31 the transfer of ownership.

2 32 Sec. 8. Section 523A.201, subsections 8 and 10, Code 2007,  
2 33 are amended to read as follows:

2 34 8. Interest or income earned on amounts deposited in trust  
2 35 shall remain in trust under the same terms and conditions as  
3 1 payments made under the purchase agreement, ~~except that the~~  
3 2 ~~seller may withdraw so much of the interest or income as~~  
3 3 ~~represents the difference between the amount needed to adjust~~  
3 4 ~~the trust funds for inflation as set by the commissioner based~~  
3 5 ~~on the consumer price index and the interest or income earned~~  
3 6 ~~during the preceding year not to exceed fifty percent of the~~  
3 7 ~~total interest or income on a calendar-year basis. The early~~  
3 8 ~~withdrawal of interest or income under this provision does not~~  
3 9 ~~affect the purchaser's right to a credit of such interest or~~  
3 10 ~~income in the event of a nonguaranteed price agreement,~~  
3 11 ~~cancellation, or nonperformance by the seller.~~

3 12 10. If a seller voluntarily or involuntarily ceases doing  
3 13 business and the seller's obligation to provide merchandise or  
3 14 services has not been assumed by another ~~establishment seller~~  
3 15 holding a current ~~establishment permit~~ preneed seller's  
3 16 license, all trust funds, including accrued interest or  
3 17 income, shall be repaid to the purchaser within ~~one hundred~~  
3 18 ~~twenty thirty~~ days following the seller's cessation of  
3 19 business ~~or, in the event of circumstances where a payment is~~  
3 20 ~~not possible within one hundred twenty days, as soon as is~~  
3 21 ~~reasonably practicable. A seller may petition the~~  
3 22 commissioner, upon a showing of good cause, for a longer  
3 23 period of time for repayment. A seller shall notify the  
3 24 commissioner at least thirty days prior to ceasing business.

3 25 Sec. 9. Section 523A.202, subsection 4, Code 2007, is  
3 26 amended to read as follows:

3 27 4. This section does not prohibit moving trust funds from  
3 28 one financial institution to another if the commissioner is  
3 29 notified of the change within thirty days of the transfer of  
3 30 the trust funds.

3 31 Sec. 10. Section 523A.203, Code 2007, is amended by adding  
3 32 the following new subsection:

3 33 NEW SUBSECTION. 7. Unless proceeding under section  
3 34 523A.403, investment and management decisions for all trust  
3 35 funds shall be made in accordance with the provisions of  
4 1 section 633A.4302.

4 2 Sec. 11. Section 523A.204, Code 2007, is amended by  
4 3 striking the section and inserting in lieu thereof the  
4 4 following:

4 5 523A.204 PRENEED SELLER ANNUAL REPORTING REQUIREMENTS.

4 6 1. A preneed seller shall file with the commissioner not  
4 7 later than April 1 of each year an annual report on a form  
4 8 prescribed by the commissioner.

4 9 2. A preneed seller filing an annual report shall pay a  
4 10 filing fee of ten dollars per purchase agreement sold during  
4 11 the year covered by the report. Duplicate fees are not  
4 12 required for the same purchase agreement. If a purchase  
4 13 agreement has multiple sellers, the fee shall be paid by the  
4 14 preneed seller actually providing the merchandise and  
4 15 services.

4 16 3. All records maintained by the commissioner under this  
4 17 section shall be confidential pursuant to section 22.7,  
4 18 subsection 58, and shall not be made available for inspection  
4 19 or copying except upon the approval of the commissioner or the  
4 20 attorney general.

4 21 4. The commissioner shall levy an administrative penalty  
4 22 in the amount of five hundred dollars against a preneed seller  
4 23 that fails to file the annual report when due, payable to the  
4 24 state for deposit in the general fund of the state.

4 25 5. A preneed seller that fails to file the annual report  
4 26 when due shall immediately cease soliciting or executing  
4 27 purchase agreements until the annual report is filed and any  
4 28 administrative penalty assessed has been paid.

4 29 Sec. 12. Section 523A.206, Code 2007, is amended by

4 30 striking the section and inserting in lieu thereof the  
4 31 following:

4 32 523A.206 EXAMINATIONS == AUTHORITY AND SCOPE.

4 33 1. The commissioner may conduct an examination under this  
4 34 chapter of any seller as often as the commissioner deems  
4 35 appropriate. If a seller has a trust arrangement, the  
5 1 commissioner shall conduct an examination of such seller doing  
5 2 business in this state not less than once every three years  
5 3 unless the seller has provided to the commissioner, on an  
5 4 annual basis, a certified copy of an audit conducted by an  
5 5 independent certified public accountant verifying compliance  
5 6 with this chapter. The commissioner may require an audit of a  
5 7 seller, or other person by a certified public accountant to  
5 8 verify compliance with the requirements of this chapter,  
5 9 including rules adopted and orders issued pursuant to this  
5 10 chapter.

5 11 2. A seller shall reimburse the division for the expense  
5 12 of conducting the examination, including an audit conducted by  
5 13 a certified public accountant, unless the commissioner waives  
5 14 this requirement, or the seller has previously provided to the  
5 15 commissioner a certified copy of an audit conducted by an  
5 16 independent certified public accountant verifying compliance  
5 17 with this chapter for each year in question and the  
5 18 examination conducted by the commissioner does not disclose  
5 19 that the seller has not complied with this chapter for the  
5 20 years in question. The expense of an examination involving  
5 21 multiple sellers or other persons shall be prorated among them  
5 22 upon any reasonable basis as determined by the commissioner.

5 23 3. For purposes of completing an examination under this  
5 24 chapter, the commissioner may examine or investigate any  
5 25 person, or the business of any person, if the examination or  
5 26 investigation is, in the sole discretion of the commissioner,  
5 27 necessary or material to the examination of the seller.

5 28 4. Upon determining that an examination should be  
5 29 conducted, the commissioner may appoint one or more examiners  
5 30 to perform the examination and instruct those examiners as to  
5 31 the scope of the examination.

5 32 5. A seller, or other person from whom information is  
5 33 sought, and its officers, directors, employees, and agents  
5 34 shall provide to the examiners appointed under subsection 4,  
5 35 timely, convenient, and free access at their offices, at all  
6 1 reasonable hours, to all books, records, accounts, papers,  
6 2 documents, and all electronic or other recordings related to  
6 3 the property, assets, business, and affairs of the seller  
6 4 being examined and shall facilitate the examination as much as  
6 5 possible.

6 6 a. The refusal of a seller, by its officers, directors,  
6 7 employees, or agents, to submit to an examination or to comply  
6 8 with a reasonable written request of an examiner shall  
6 9 constitute grounds for the suspension, revocation, or  
6 10 nonrenewal of any license held by the seller to engage in  
6 11 business subject to the commissioner's jurisdiction.

6 12 b. If a seller declines or refuses to submit to an  
6 13 examination as provided in this chapter, the commissioner  
6 14 shall immediately suspend, revoke, or nonrenew any license  
6 15 held by the seller or business to engage in business subject  
6 16 to the commissioner's jurisdiction, and shall report the  
6 17 commissioner's action to the attorney general, who shall  
6 18 immediately apply to the district court for the appointment of  
6 19 a receiver to administer the final affairs of the seller.

6 20 6. The commissioner shall not make information obtained in  
6 21 the course of an examination public, except when a duty under  
6 22 this chapter requires the commissioner to take action against  
6 23 a seller or to cooperate with another law enforcement agency,  
6 24 or when the commissioner is called as a witness in a civil or  
6 25 criminal proceeding.

6 26 7. This section shall not be construed to limit the  
6 27 commissioner's authority to terminate or suspend any  
6 28 examination in order to pursue other legal or regulatory  
6 29 actions pursuant to this chapter. Findings of fact and  
6 30 conclusions made pursuant to an examination are deemed to be  
6 31 prima facie evidence in any legal or regulatory action.

6 32 Sec. 13. NEW SECTION. 523A.207 AUDITS BY CERTIFIED  
6 33 PUBLIC ACCOUNTANTS.

6 34 A purchase agreement shall not be sold or transferred, as  
6 35 part of the sale of a business or the assets of a business,  
7 1 until an audit has been performed by a certified public  
7 2 accountant and filed with the commissioner that expresses the  
7 3 auditor's opinion of the adequacy of funding related to the  
7 4 purchase agreements to be sold or transferred.

7 5 Sec. 14. Section 523A.404, subsection 1, unnumbered

7 6 paragraph 1, Code 2007, is amended to read as follows:  
7 7 Trust requirements do not apply to payments made pursuant  
7 8 to a purchase agreement executed prior to July 1, 2007, for  
7 9 outer burial containers made of either polystyrene or  
7 10 polypropylene or cemetery merchandise delivered to the  
7 11 purchaser or stored in an independent third-party storage  
7 12 facility not owned or controlled by the seller when approved  
7 13 by the commissioner. The seller or the storage facility must  
7 14 demonstrate that they will do all of the following:  
7 15 Sec. 15. Section 523A.404, subsection 1, paragraphs f and  
7 16 h, Code 2007, are amended to read as follows:  
7 17 f. Use a method of storage that allows for visual ~~audits~~  
7 18 examinations of the merchandise.  
7 19 h. File a consent to be ~~audited~~ examined and inspected by  
7 20 the commissioner.  
7 21 Sec. 16. Section 523A.501, Code 2007, is amended to read  
7 22 as follows:  
7 23 523A.501 ~~ESTABLISHMENT == PERMITS PRENEED SELLERS ==~~  
7 24 LICENSES.  
7 25 1. A person shall not advertise, sell, promote, or offer  
7 26 to furnish cemetery merchandise, funeral merchandise, funeral  
7 27 services, or a combination thereof when performance or  
7 28 delivery may be more than one hundred twenty days following  
7 29 the initial payment on the account without ~~an establishment~~  
7 30 ~~permit a preneed seller's license. Each establishment must~~  
7 31 ~~have an establishment permit.~~  
7 32 2. An application for ~~an establishment permit a preneed~~  
7 33 ~~seller's license~~ shall be filed on a form prescribed by the  
7 34 commissioner, ~~and~~ be accompanied by a fifty dollar filing fee,  
7 35 ~~and include a copy of each purchase agreement the person will~~  
8 1 ~~use for sales of cemetery merchandise, funeral merchandise,~~  
8 2 ~~funeral services, or a combination thereof.~~  
8 3 3. ~~The application shall contain:~~  
8 4 a. ~~The name and address of the establishment.~~  
8 5 b. ~~The name and address of any additional provider of~~  
8 6 ~~cemetery merchandise, funeral merchandise, funeral services,~~  
8 7 ~~or a combination thereof.~~  
8 8 c. ~~The name and address of each owner, officer, or other~~  
8 9 ~~official of the establishment, including when relevant the~~  
8 10 ~~chief executive officer and the members of the board of~~  
8 11 ~~directors.~~  
8 12 d. ~~A description of any common business enterprise or~~  
8 13 ~~parent company.~~  
8 14 e. ~~The types of cemetery merchandise, funeral merchandise,~~  
8 15 ~~funeral services, or a combination thereof to be sold.~~  
8 16 f. ~~The types of trust or trust alternatives utilized by~~  
8 17 ~~the establishment and a list of the financial institutions,~~  
8 18 ~~storage facilities, surety companies, and insurance companies~~  
8 19 ~~utilized by the establishment on a regular basis.~~  
8 20 4. A permit holder shall inform the commissioner of  
8 21 changes in the information required to be provided by  
8 22 subsection 3 within thirty days of the change.  
8 23 3. a. The commissioner shall request and obtain,  
8 24 notwithstanding section 692.2, subsection 5, criminal history  
8 25 data for any applicant for an initial license issued pursuant  
8 26 to this section, any applicant for reinstatement of a license  
8 27 issued pursuant to this section, or any licensee who is being  
8 28 monitored as a result of a commission order or agreement  
8 29 resolving an administrative disciplinary action, for the  
8 30 purpose of evaluating the applicant's or licensee's  
8 31 eligibility for licensure or suitability for continued  
8 32 practice as a preneed seller. The commissioner shall adopt  
8 33 rules pursuant to chapter 17A to implement this section. The  
8 34 commissioner shall inform the applicant or licensee of the  
8 35 criminal history requirement and obtain a signed waiver from  
9 1 the applicant or licensee prior to submitting a criminal  
9 2 history data request.  
9 3 b. A request for criminal history data shall be submitted  
9 4 to the department of public safety, division of criminal  
9 5 investigation, pursuant to section 692.2, subsection 1. The  
9 6 commissioner may also require such applicants or licensees to  
9 7 provide a full set of fingerprints, in a form and manner  
9 8 prescribed by the commission. Such fingerprints may be  
9 9 submitted to the federal bureau of investigation through the  
9 10 state criminal history repository for a national criminal  
9 11 history check. The commissioner may authorize alternate  
9 12 methods or sources for obtaining criminal history record  
9 13 information. The commissioner may, in addition to any other  
9 14 fees, charge and collect such amounts as may be incurred by  
9 15 the commissioner, the department of public safety, or the  
9 16 federal bureau of investigation in obtaining criminal history



9 17 information. Amounts collected shall be considered repayment  
9 18 receipts as defined in section 8.2.  
9 19 c. Criminal history information relating to an applicant  
9 20 or licensee obtained by the commissioner pursuant to this  
9 21 section is confidential. The commissioner may, however, use  
9 22 such information in a license denial proceeding.  
9 23 4. The commissioner shall request and obtain a financial  
9 24 history for any applicant for an initial license issued  
9 25 pursuant to this section, any applicant for reinstatement of a  
9 26 license issued pursuant to this section, or any licensee who  
9 27 is being monitored as a result of a commission order or  
9 28 agreement resolving an administrative disciplinary action, for  
9 29 the purpose of evaluating the applicant's or licensee's  
9 30 eligibility for licensure or suitability for continued  
9 31 practice as a preneed seller. "Financial history" means the  
9 32 record of a person's current loans, the date of a person's  
9 33 loans, the amount of the loans, the person's payment record on  
9 34 the loans, current liens against the person's property, and  
9 35 the person's most recent financial statement setting forth the  
10 1 assets, liabilities, and the net worth of the person.  
10 2 5. An establishment permit A preneed seller's license is  
10 3 not assignable or transferable. A ~~permit holder~~ licensee  
10 4 selling all or part of an establishment a business entity that  
10 5 has a preneed seller's license shall cancel the ~~permit~~  
10 6 license, and the purchaser shall apply for a new ~~permit~~  
10 7 license in the purchaser's name within thirty days of the  
10 8 sale.  
10 9 6. If no denial order is in effect and no proceeding is  
10 10 pending under section 523A.503, the application becomes  
10 11 effective at noon of the thirtieth day after a completed  
10 12 application or an amendment completing the application is  
10 13 filed, unless waived by the applicant. The commissioner may  
10 14 specify an earlier effective date. Automatic effectiveness  
10 15 under this subsection shall not be deemed approval of the  
10 16 application. If the commissioner does not grant the ~~permit~~  
10 17 license, the commissioner shall notify the person in writing  
10 18 of the reasons for the denial.  
10 19 7. An initial permit is valid for two years from the date  
10 20 the application is filed. A permit may be renewed for two  
10 21 years by filing the form prescribed by the commissioner under  
10 22 subsection 2, accompanied by a ten dollar renewal fee.  
10 23 Submission of purchase agreements is not required for renewals  
10 24 unless the purchase agreements have been modified since the  
10 25 last filing. A preneed seller's license shall remain valid  
10 26 until it is denied, suspended, revoked, or surrendered.  
10 27 8. The commissioner may by rule create or accept a  
10 28 multijurisdiction establishment permit preneed seller's  
10 29 license. If the establishment permit preneed seller's license  
10 30 is issued by another jurisdiction, the rules shall require the  
10 31 filing of an application or notice form and payment of the  
10 32 applicable filing fee of fifty dollars for an initial  
10 33 application and ten dollars for a renewal application. The  
10 34 application or notice form utilized and the effective dates  
10 35 and terms of the ~~permit license~~ may vary from the provisions  
11 1 set forth in ~~subsections 2, 3, and 7~~ this section.  
11 2 Sec. 17. Section 523A.502, Code 2007, is amended to read  
11 3 as follows:  
11 4 523A.502 SALES ~~PERMITS~~ AGENTS == LICENSES.  
11 5 1. A person shall not advertise, sell, promote, or offer  
11 6 to furnish cemetery merchandise, funeral merchandise, funeral  
11 7 services, or a combination thereof when performance or  
11 8 delivery may be more than one hundred twenty days following  
11 9 initial payment on the account ~~without unless the person has a~~  
11 10 sales permit. A permit holder must be an employee or license  
11 11 and is a sales agent of a person holding an establishment  
11 12 permit who can deliver the cemetery merchandise, funeral  
11 13 merchandise, funeral services, or a combination thereof being  
11 14 sold a preneed seller's license. A person must have a sales  
11 15 permit for each establishment at which the person works.  
11 16 However, a person may apply for a sales permit covering  
11 17 multiple establishments, if the establishments have common  
11 18 ownership. The establishment permit holder preneed seller  
11 19 licensee is liable for the acts of its employees and sales  
11 20 agents performed in advertising, selling, promoting, or  
11 21 offering to furnish, upon the future death of a person named  
11 22 or implied in a purchase agreement, cemetery merchandise,  
11 23 funeral merchandise, funeral services, or a combination  
11 24 thereof.  
11 25 2. This chapter does not permit a person to practice  
11 26 mortuary science without a license. A person holding a  
11 27 current sales ~~permit license~~ may advertise, sell, promote, or

11 28 offer to furnish a funeral director's services as an employee  
11 29 or agent of a funeral establishment furnishing the funeral  
11 30 services under chapter 156.  
11 31 3. An application for a sales ~~permit~~ license shall be  
11 32 filed on a form prescribed by the commissioner and be  
11 33 accompanied by a ~~five dollar~~ filing fee in an amount set by  
11 34 the commissioner by rule.

11 35 4. ~~The application shall contain:~~  
12 1 a. ~~The name and address of the person.~~  
12 2 b. ~~The name and address of the person's employer and each~~  
12 3 ~~establishment on whose behalf the person will be advertising,~~  
12 4 ~~selling, promoting, or offering to furnish cemetery~~  
12 5 ~~merchandise, funeral merchandise, funeral services, or a~~  
12 6 ~~combination thereof.~~  
12 7 c. ~~The name and address of the provider who will provide~~  
12 8 ~~the cemetery merchandise, funeral merchandise, funeral~~  
12 9 ~~services, or a combination thereof if different from the~~  
12 10 ~~person's employer.~~

12 11 4. a. The commissioner shall request and obtain,  
12 12 notwithstanding section 692.2, subsection 5, criminal history  
12 13 data for any applicant for an initial license issued pursuant  
12 14 to this section, any applicant for reinstatement of a license  
12 15 issued pursuant to this section, or any licensee who is being  
12 16 monitored as a result of a commission order or agreement  
12 17 resolving an administrative disciplinary action, for the  
12 18 purpose of evaluating the applicant's or licensee's  
12 19 eligibility for licensure or suitability for continued  
12 20 practice as a sales agent. The commissioner shall adopt rules  
12 21 pursuant to chapter 17A to implement this section. The  
12 22 commissioner shall inform the applicant or licensee of the  
12 23 criminal history requirement and obtain a signed waiver from  
12 24 the applicant or licensee prior to submitting a criminal  
12 25 history data request.

12 26 b. A request for criminal history data shall be submitted  
12 27 to the department of public safety, division of criminal  
12 28 investigation, pursuant to section 692.2, subsection 1. The  
12 29 commissioner may also require such applicants or licensees, to  
12 30 provide a full set of fingerprints, in a form and manner  
12 31 prescribed by the commission. Such fingerprints may be  
12 32 submitted to the federal bureau of investigation through the  
12 33 state criminal history repository for a national criminal  
12 34 history check. The commissioner may authorize alternate  
12 35 methods or sources for obtaining criminal history record  
13 1 information. The commissioner may, in addition to any other  
13 2 fees, charge and collect such amounts as may be incurred by  
13 3 the commissioner, the department of public safety, or the  
13 4 federal bureau of investigation in obtaining criminal history  
13 5 information. Amounts collected shall be considered repayment  
13 6 receipts as defined in section 8.2.

13 7 c. Criminal history information relating to an applicant  
13 8 or licensee obtained by the commissioner pursuant to this  
13 9 section is confidential. The commissioner may, however, use  
13 10 such information in a license denial proceeding.

13 11 5. An initial permit expires one year from the date the  
13 12 application is filed. The permit may be renewed for four  
13 13 years by filing the form prescribed by the commissioner under  
13 14 subsection 3, accompanied by a twenty dollar filing fee. The  
13 15 sales license shall be valid until denied, suspended, revoked,  
13 16 or surrendered.

13 17 6. A sales agent licensed pursuant to this section shall  
13 18 satisfactorily fulfill continuing education requirements for  
13 19 the license as prescribed by the commissioner by rule.

13 20 6. 7. A permit holder sales licensee shall inform the  
13 21 commissioner of changes in the information required to be  
13 22 provided by subsection 4 in the application within thirty days  
13 23 of the change.

13 24 7. 8. A sales permit license is not assignable or  
13 25 transferable. An establishment selling all or part of its  
13 26 business to a purchaser shall cancel the establishment's sales  
13 27 permit. The purchaser shall apply for a new sales permit in  
13 28 the purchaser's name within thirty days of the sale.

13 29 8. 9. If no denial order is in effect and no proceeding  
13 30 is pending under section 523A.503, the application becomes  
13 31 effective at noon of the thirtieth day after a completed  
13 32 application or an amendment completing the application is  
13 33 filed, unless waived by the applicant. The commissioner may  
13 34 specify an earlier effective date. Automatic effectiveness  
13 35 under this subsection shall not be deemed approval of the  
14 1 application. If the commissioner does not grant the permit  
14 2 license, the commissioner shall notify the applicant in  
14 3 writing of the reasons for the denial.

14 4 9- 10. The commissioner may by rule create or accept a  
14 5 multijurisdiction sales ~~permit license~~. If the sales ~~permit~~  
14 6 ~~license~~ is issued by another jurisdiction, the rules shall  
14 7 require the filing of an application or notice form and  
14 8 payment of the applicable filing fee of ~~five dollars for each~~  
14 9 ~~year~~. The application or notice form utilized and the  
14 10 effective dates and terms of the ~~permit license~~ may vary from  
14 11 the provisions set forth in subsections 3 and 5.

14 12 Sec. 18. NEW SECTION. 523A.502A SALES AGENT ANNUAL  
14 13 REPORTING REQUIREMENTS.

14 14 1. A sales agent shall file with the commissioner not  
14 15 later than April 1 of each year an annual report on a form  
14 16 prescribed by the commissioner, including a copy of each  
14 17 purchase agreement sold by the sales agent during the year.

14 18 2. All records maintained by the commissioner under this  
14 19 section shall be confidential pursuant to section 22.7,  
14 20 subsection 58, and shall not be made available for inspection  
14 21 or copying except upon the approval of the commissioner or the  
14 22 attorney general.

14 23 3. The commissioner shall levy an administrative penalty  
14 24 in the amount of five hundred dollars against a sales agent  
14 25 who fails to file an annual report when due, payable to the  
14 26 state for deposit in the general fund.

14 27 4. A sales agent who fails to file the annual report when  
14 28 due shall immediately cease soliciting or executing purchase  
14 29 agreements until the annual report is filed and any  
14 30 administrative penalty assessed has been paid.

14 31 Sec. 19. Section 523A.503, Code 2007, is amended to read  
14 32 as follows:

14 33 523A.503 DENIAL, SUSPENSION, REVOCATION, AND SURRENDER OF  
14 34 ~~PERMITS LICENSES~~.

14 35 1. The commissioner may, pursuant to chapter 17A, deny any  
15 1 ~~permit license~~ application, or immediately suspend, revoke, or  
15 2 otherwise impose disciplinary action related to any ~~permit~~  
15 3 ~~license~~ issued under ~~this chapter section 523A.501 or 523A.502~~  
15 4 for several reasons, including but not limited to:

15 5 a. Committing a fraudulent act, engaging in a fraudulent  
15 6 practice, or violating any provision of this chapter or any  
15 7 implementing rule or order issued under this chapter.

15 8 b. Violating any other state or federal law applicable to  
15 9 the conduct of the applicant's or ~~permit holder's~~ licensee's  
15 10 business.

15 11 c. Insolvency or financial condition.

15 12 d. The ~~permit holder licensee~~, for the purpose of avoiding  
15 13 the trust requirement for funeral services, attributes amounts  
15 14 paid under the purchase agreement to cemetery merchandise or  
15 15 funeral merchandise that is delivered under section 523A.404  
15 16 rather than to funeral services sold to the purchaser. The  
15 17 sale of funeral services at a lower price when the sale is  
15 18 made in conjunction with the sale of cemetery merchandise or  
15 19 funeral merchandise to be delivered under section 523A.404  
15 20 than the services are regularly and customarily sold for when  
15 21 not sold in conjunction with cemetery merchandise or funeral  
15 22 merchandise is evidence that the ~~permit holder licensee~~ is  
15 23 acting with the purpose of avoiding the trust requirement for  
15 24 funeral services under section 523A.201.

15 25 e. Engaging in a deceptive act or practice or deliberately  
15 26 misrepresenting or omitting a material fact regarding the sale  
15 27 of cemetery merchandise, funeral merchandise, funeral  
15 28 services, or a combination thereof under this chapter.

15 29 f. Conviction of a criminal offense involving dishonesty  
15 30 or a false statement including but not limited to fraud,

15 31 theft, misappropriation of funds, falsification of documents,  
15 32 deceptive acts or practices, or other related offenses.

15 33 g. Inability to provide the cemetery merchandise, funeral  
15 34 merchandise, funeral services, or a combination thereof which  
15 35 the applicant or ~~permit holder licensee~~ purports to sell.

16 1 h. The applicant or ~~permit holder licensee~~ sells the  
16 2 business without filing a prior notice of sale with the  
16 3 commissioner. The ~~permit license~~ shall be revoked thirty days  
16 4 following such sale.

16 5 i. Selling by a person who is not ~~an employee or agent of~~  
16 6 ~~the applicant or permit holder~~ a licensed sales agent.

16 7 j. The applicant or licensee is named in an order issued  
16 8 pursuant to section 523A.807, subsection 3, paragraph "b".

16 9 2. The commissioner may, for good cause shown, suspend any  
16 10 ~~permit license~~ for a period not exceeding thirty days, pending  
16 11 investigation.

16 12 3. Except as provided in subsection 2, a ~~permit license~~  
16 13 shall not be revoked, suspended, or otherwise be the subject  
16 14 of disciplinary action except after notice and hearing under

16 15 chapter 17A.

16 16 4. Any ~~permit holder licensee~~ may surrender a ~~permit~~  
16 17 ~~license~~ by delivering to the commissioner written notice that  
16 18 the ~~permit holder licensee~~ surrenders the ~~permit license~~, but  
16 19 the surrender shall not affect the ~~permit holder's licensee's~~  
16 20 civil or criminal liability for acts committed before the  
16 21 surrender.

16 22 5. Denial, revocation, suspension, or surrender of a  
16 23 ~~permit license~~ does not impair or affect the obligation of any  
16 24 preexisting lawful agreement between the ~~permit holder~~  
16 25 ~~licensee~~ and any person.

16 26 ~~6. The commissioner may impose a civil penalty in an~~  
~~16 27 amount not exceeding ten thousand dollars per violation~~  
~~16 28 against any person violating this chapter. Each day of a~~  
~~16 29 continuing violation constitutes a separate offense.~~

16 30 Sec. 20. NEW SECTION. 523A.504 APPOINTMENT OF SALES  
16 31 AGENTS.

16 32 1. A person shall not sell or offer to furnish cemetery  
16 33 merchandise, funeral merchandise, funeral services, or a  
16 34 combination thereof when performance or delivery may be more  
16 35 than one hundred twenty days following initial payment on the  
17 1 account except through a sales agent who holds a sales license  
17 2 issued pursuant to section 523A.502. If a person holding a  
17 3 preneed seller's license appoints a sales agent to act on  
17 4 behalf of the preneed seller, the person shall file a notice  
17 5 of such appointment with the commissioner within thirty days  
17 6 of the appointment, in a format approved by the commissioner,  
17 7 and annually thereafter.

17 8 2. A preneed seller shall pay an annual fee of five  
17 9 dollars for each sales agent appointed by the preneed seller,  
17 10 which fee shall be submitted with the annual report.

17 11 Sec. 21. Section 523A.601, subsection 1, paragraph a, Code  
17 12 2007, is amended to read as follows:

17 13 a. Identify the ~~seller preneed seller by name and license~~  
~~17 14 number, the salesperson's permit and establishment sales agent~~  
~~17 15 by name and permit license number, the expiration date of the~~  
~~17 16 salesperson's permit, the purchaser, and the person for whom~~  
17 17 the cemetery merchandise, funeral merchandise, funeral  
17 18 services, or a combination thereof is purchased, if other than  
17 19 the purchaser.

17 20 Sec. 22. Section 523A.601, Code 2007, is amended by adding  
17 21 the following new subsection:

17 22 NEW SUBSECTION. 6. a. A purchase agreement that is  
17 23 funded by a trust shall include a conspicuous statement in  
17 24 language substantially similar to the following language:  
17 25 "For your prearranged funeral agreement, we will deposit  
17 26 not less than eighty percent of your payments in trust at  
17 27 (name of financial institution), (street address), (city),  
17 28 (state) (zip code) within fifteen days following the end of  
17 29 the calendar month that we received the funds. For your  
17 30 protection, you have the right to contact the financial  
17 31 institution directly to confirm that the deposit of these  
17 32 funds occurred as required by law. If you are unable to  
17 33 confirm the deposit of these funds in trust, you may contact  
17 34 the Iowa insurance division for assistance by calling the  
17 35 insurance division at (telephone number) or by mail at (street  
18 1 address), (city), Iowa (zip code)."

18 2 b. A purchase agreement that is funded with an insurance  
18 3 policy or an annuity shall include a conspicuous statement in  
18 4 language substantially similar to the following language:  
18 5 "If an insurance policy or annuity is not purchased to fund  
18 6 your prearranged funeral agreement, it is possible that the  
18 7 seller may not be able to deliver on the arrangements  
18 8 contained in the agreement due to insufficient funding. An  
18 9 (insurance policy or annuity) will be purchased from (name of  
18 10 issuer of the policy or annuity), (street address), (city),  
18 11 (state) (zip code). You should receive confirmation of the  
18 12 purchase of an insurance policy or certificate, or an annuity  
18 13 within sixty days of making payment. Delivery of the actual  
18 14 insurance policy or certificate or annuity shall also  
18 15 constitute confirmation. If you do not receive confirmation  
18 16 that an insurance policy or certificate or an annuity has been  
18 17 purchased or receive the insurance policy or certificate or  
18 18 the annuity, you should report this fact to the Iowa insurance  
18 19 division, by calling the insurance division at (telephone  
18 20 number). Written reports should be mailed to the Iowa  
18 21 insurance division at (street address), (city), Iowa (zip  
18 22 code)."

18 23 c. A purchase agreement that is funded with a surety bond  
18 24 shall include a conspicuous statement in language  
18 25 substantially similar to the following language:



18 26 "If a surety bond is not purchased to fund your prearranged  
18 27 funeral agreement, it is possible that the seller may not be  
18 28 able to deliver on the arrangements contained in the agreement  
18 29 due to insufficient funding. Coverage under a surety bond, in  
18 30 the amount of \$(amount) will be purchased from (name of issuer  
18 31 of surety bond), (street address), (city), (state) (zip code)  
18 32 to fund your purchase. If you pay pursuant to your purchase  
18 33 agreement with a single payment, you should receive  
18 34 confirmation of the purchase of a surety bond within sixty  
18 35 days of making the payment. If you pay pursuant to your  
19 1 purchase agreement with multiple, periodic payments, you  
19 2 should receive confirmation of the purchase of a surety bond  
19 3 within sixty days of making the first payment and within sixty  
19 4 days of making the last payment pursuant to the agreement. If  
19 5 you do not receive confirmation of coverage under a surety  
19 6 bond within sixty days of making the first payment and within  
19 7 sixty days of making the last payment, you should report this  
19 8 fact to the Iowa insurance division, by calling the insurance  
19 9 division at (telephone number). Written reports should be  
19 10 mailed to the Iowa insurance division at (street address),  
19 11 (city), Iowa (zip code)."

19 12 Sec. 23. NEW SECTION. 523A.603 SECURITY AND NOTICE  
19 13 REQUIREMENTS.

19 14 1. If a purchase agreement is funded with an insurance  
19 15 policy or an annuity, the purchaser shall receive a notice  
19 16 thereof from the insurance company within sixty days of making  
19 17 payment. The notice shall include the name and address of the  
19 18 insurance company, the policy number of the insurance policy  
19 19 that secures the agreement, the name of the insured under the  
19 20 insurance policy or annuity, and the amount of the accumulated  
19 21 death benefit. Delivery of the insurance policy or  
19 22 certificate or annuity shall satisfy this notice requirement.

19 23 2. If a purchase agreement is funded by a surety bond, the  
19 24 purchaser shall receive a notice from the surety company that  
19 25 evidences coverage under the bond, the name of the purchaser  
19 26 or beneficiary, and the amount of coverage. If the purchase  
19 27 agreement is paid with a single payment, the purchaser shall  
19 28 receive notice of the surety bond within sixty days of making  
19 29 the payment. If the purchase agreement is being paid with  
19 30 multiple, periodic payments, the purchaser shall receive  
19 31 notice of the surety bond within sixty days of making the last  
19 32 payment. Compliance with this notice requirement does not  
19 33 require a seller to purchase individual surety bonds for each  
19 34 purchaser and beneficiary. A seller may file a single bond  
19 35 with the commissioner.

20 1 Sec. 24. NEW SECTION. 523A.604 PURCHASE AGREEMENTS ==  
20 2 NUMBERING.

20 3 Purchase agreements for cemetery merchandise, funeral  
20 4 merchandise, funeral services, or a combination thereof shall  
20 5 be sequentially numbered by each seller in compliance with  
20 6 procedures specified by the commissioner by rules adopted  
20 7 under chapter 17A.

20 8 Sec. 25. Section 523A.703, subsection 5, Code 2007, is  
20 9 amended to read as follows:

20 10 5. Knowingly sells or offers cemetery merchandise, funeral  
20 11 merchandise, funeral services, or a combination thereof  
20 12 without ~~an establishment permit~~ a preneed seller's license or  
20 13 a sales agent license.

20 14 Sec. 26. NEW SECTION. 523A.704 VIOLATIONS.

20 15 A person who willfully violates the provisions of section  
20 16 523A.201, 523A.202, 523A.401, 523A.402, 523A.403, 523A.404,  
20 17 523A.405, 523A.501, or 523A.502 of this chapter or any rules  
20 18 adopted pursuant thereto is guilty of a class "D" felony.

20 19 Sec. 27. Section 523A.801, subsection 1, Code 2007, is  
20 20 amended to read as follows:

20 21 1. This chapter shall be administered by the commissioner.  
20 22 ~~The deputy administrator appointed pursuant to section 502.601~~  
20 23 ~~shall be the principal operations officer responsible to the~~  
20 24 ~~commissioner for the routine administration of this chapter~~  
20 25 ~~and management of the administrative staff. In the absence of~~  
20 26 ~~the commissioner, whether because of vacancy in the office due~~  
20 27 ~~to absence, physical disability, or other cause, the deputy~~  
20 28 ~~administrator shall, for the time being, have and exercise the~~  
20 29 ~~authority conferred upon the commissioner. The commissioner~~  
20 30 ~~may by order from time to time delegate to the deputy~~  
20 31 ~~administrator any or all of the functions assigned to the~~  
20 32 ~~commissioner in this chapter. The deputy administrator shall~~  
20 33 employ officers, attorneys, accountants, and other employees  
20 34 as needed for administering this chapter.

20 35 Sec. 28. Section 523A.807, Code 2007, is amended by adding  
21 1 the following new subsections:

21 2 NEW SUBSECTION. 3. If the commissioner finds that a  
21 3 person has violated section 523A.201, 523A.202, 523A.401,  
21 4 523A.402, 523A.403, 523A.404, 523A.405, 523A.501, or 523A.502  
21 5 or any rule adopted pursuant thereto, the commissioner may  
21 6 order any or all of the following:  
21 7 a. Payment of a civil penalty of not more than one  
21 8 thousand dollars for each violation, but not exceeding an  
21 9 aggregate of ten thousand dollars during any six-month period,  
21 10 except that if the commissioner finds that the person knew or  
21 11 reasonably should have known that the person was in violation  
21 12 of such provisions or rules adopted thereto, the penalty shall  
21 13 be not more than five thousand dollars for each violation, but  
21 14 not exceeding an aggregate of fifty thousand dollars during  
21 15 any six-month period. The commissioner shall assess the  
21 16 penalty on the employer of an individual and not on the  
21 17 individual, if the commissioner finds that the violations  
21 18 committed by the individual were directed, encouraged,  
21 19 condoned, ignored, or ratified by the individual's employer.  
21 20 b. Issuance of an order prohibiting the person committing  
21 21 a violation from selling funeral merchandise, cemetery  
21 22 merchandise, funeral services, or a combination thereof, and  
21 23 from managing, operating, or otherwise exercising control over  
21 24 any business entity that is subject to regulation under this  
21 25 chapter or chapter 523I. A person who has been named in such  
21 26 an order may contest the order by filing a request for a  
21 27 contested case proceeding as provided in chapter 17A and in  
21 28 accordance with rules adopted by the commissioner. The  
21 29 commissioner may, pursuant to chapter 17A, deny any  
21 30 application filed under section 523A.501 or 523A.502 if the  
21 31 applicant, or an officer, director, or owner of the applicant  
21 32 is named in a final order issued pursuant to this subsection.  
21 33 NEW SUBSECTION. 4. The commissioner shall post on the  
21 34 website of the division of insurance of the department of  
21 35 commerce a list of all persons licensed under chapter 523A and  
22 1 an index of orders issued by the commissioner pertaining to  
22 2 such persons.  
22 3 Sec. 29. Section 523A.811, subsection 1, Code 2007, is  
22 4 amended by adding the following new paragraph:  
22 5 NEW PARAGRAPH. f. A receivership has been established for  
22 6 a cemetery subject to chapter 523I that is owned or operated  
22 7 by a seller who is subject to this chapter.  
22 8 Sec. 30. Section 523A.811, Code 2007, is amended by adding  
22 9 the following new subsection:  
22 10 NEW SUBSECTION. 3. If a seller who is subject to this  
22 11 chapter owns or operates a cemetery subject to chapter 523I,  
22 12 for which a receivership has been established, the  
22 13 receivership provisions of section 523I.212 shall apply to any  
22 14 receivership established under this section.  
22 15 Sec. 31. Section 523A.812, Code 2007, is amended to read  
22 16 as follows:  
22 17 523A.812 INSURANCE DIVISION REGULATORY FUND.  
22 18 The insurance division may authorize the creation of a  
22 19 special revenue fund in the state treasury, to be known as the  
22 20 insurance division regulatory fund. The commissioner shall  
22 21 allocate annually from the fees paid pursuant to section  
22 22 523A.204, two dollars for each purchase agreement reported on  
22 23 ~~an establishment permit holder's~~ a preneed seller's annual  
22 24 report ~~filed pursuant to section 523A.204~~ for deposit to the  
22 25 regulatory fund. The remainder of the fees collected pursuant  
22 26 to section 523A.204 shall be deposited into the general fund  
22 27 of the state. The commissioner shall also allocate annually  
22 28 the ~~audit examination~~ fees paid pursuant to section 523A.814  
22 29 ~~and any examination expense reimbursement~~ for deposit to the  
22 30 regulatory fund. The moneys in the regulatory fund shall be  
22 31 retained in the fund. The moneys are appropriated and,  
22 32 subject to authorization by the commissioner, may be used to  
22 33 ~~pay auditors, audit examiners, examination expenses,~~  
22 34 ~~investigative expenses, the expenses of mediation ordered by~~  
22 35 ~~the commissioner, consumer education expenses, the expenses of~~  
23 1 ~~a toll-free telephone line to receive consumer complaints, and~~  
23 2 ~~the expenses of receiverships established under section~~  
23 3 ~~523A.811. If the commissioner determines that funding is not~~  
23 4 ~~otherwise available to reimburse the expenses of a person who~~  
23 5 ~~receives title to a cemetery subject to chapter 523I, pursuant~~  
23 6 ~~to such a receivership, the commissioner shall use moneys in~~  
23 7 ~~the regulatory fund as necessary to preserve, protect,~~  
23 8 ~~restore, and maintain the physical integrity of that cemetery~~  
23 9 ~~and to satisfy claims or demands for cemetery merchandise,~~  
23 10 ~~funeral merchandise, and funeral services based on purchase~~  
23 11 ~~agreements which the commissioner determines are just and~~  
23 12 ~~outstanding. An annual allocation to the regulatory fund~~

23 13 shall not be imposed if the current balance of the fund  
23 14 exceeds ~~two~~ five hundred thousand dollars.  
23 15 Sec. 32. Section 523A.814, Code 2007, is amended to read  
23 16 as follows:  
23 17 523A.814 ~~AUDIT~~ EXAMINATION FEE.  
23 18 In addition to the filing fee paid pursuant to section  
23 19 523A.204, subsection 5 ~~2~~, ~~an establishment a seller~~ filing an  
23 20 annual report shall pay an ~~audit~~ examination fee in the amount  
23 21 of five dollars for each purchase agreement subject to a  
23 22 filing fee that is sold between July 1, 2005, and December 31,  
23 23 2007, ~~and in the amount of ten dollars for each purchase~~  
23 24 ~~agreement subject to a filing fee that is sold after December~~  
23 25 ~~31, 2007.~~  
23 26 Sec. 33. Section 523I.102, subsections 3 and 8, Code 2007,  
23 27 are amended to read as follows:  
23 28 3. "Capital gains" means appreciation in the value of  
23 29 trust assets for which a market value may be determined with  
23 30 reasonable certainty after deduction of investment losses,  
23 31 taxes, expenses incurred in the sale of trust assets, any  
23 32 costs of the operation of the trust, examination expenses, and  
23 33 any ~~annual~~ audit fees ~~expenses~~.  
23 34 8. "Commissioner" means the commissioner of insurance or  
23 35 the ~~deputy administrator authorized in section 523A.801 to the~~  
24 1 ~~extent the commissioner delegates functions to the deputy~~  
24 2 ~~administrator commissioner's designee authorized in section~~  
24 3 ~~523A.801.~~  
24 4 Sec. 34. Section 523I.102, subsection 17, unnumbered  
24 5 paragraph 1, Code 2007, is amended to read as follows:  
24 6 "Income" means the return in money or property derived from  
24 7 the use of trust principal after deduction of investment  
24 8 losses, taxes, and expenses incurred in the sale of trust  
24 9 assets, any cost of the operation of the trust, examination  
24 10 expenses or fees, and any ~~annual~~ audit fees ~~expenses~~.  
24 11 "Income" includes but is not limited to:  
24 12 Sec. 35. Section 523I.201, subsection 1, Code 2007, is  
24 13 amended to read as follows:  
24 14 1. This chapter shall be administered by the commissioner.  
24 15 ~~The deputy administrator appointed pursuant to section 502.601~~  
24 16 ~~shall be the principal operations officer responsible to the~~  
24 17 ~~commissioner for the routine administration of this chapter~~  
24 18 ~~and management of the administrative staff. In the absence of~~  
24 19 ~~the commissioner, whether because of vacancy in the office due~~  
24 20 ~~to absence, physical disability, or other cause, the deputy~~  
24 21 ~~administrator shall, for the time being, have and exercise the~~  
24 22 ~~authority conferred upon the commissioner. The commissioner~~  
24 23 ~~may by order from time to time delegate to the deputy~~  
24 24 ~~administrator any or all of the functions assigned to the~~  
24 25 ~~commissioner in this chapter. The deputy administrator shall~~  
24 26 ~~employ officers, attorneys, accountants, and other employees~~  
24 27 ~~as needed for administering this chapter.~~  
24 28 Sec. 36. Section 523I.212, subsection 1, Code 2007, is  
24 29 amended by adding the following new paragraph:  
24 30 NEW PARAGRAPH. d. A receivership has been established for  
24 31 a seller subject to chapter 523A who owns or operates a  
24 32 cemetery that is subject to this chapter.  
24 33 Sec. 37. Section 523I.212, subsection 2, Code 2007, is  
24 34 amended to read as follows:  
24 35 2. The commissioner or attorney general may apply to the  
25 1 district court in any county of the state for the  
25 2 establishment of a receivership. Upon proof that any of the  
25 3 conditions described in this section have occurred, the court  
25 4 may grant a receivership. The commissioner may request that  
25 5 the insurance division be named as a receiver or that the  
25 6 court appoint a third party as a receiver. If the division is  
25 7 appointed as a receiver, the division shall not be subject to  
25 8 the requirements concerning an oath and surety bond contained  
25 9 in section 680.3.  
25 10 Sec. 38. Section 523I.212, Code 2007, is amended by adding  
25 11 the following new subsections:  
25 12 NEW SUBSECTION. 3. In addition to the powers granted to  
25 13 receivers under chapter 680, a receiver appointed under this  
25 14 section shall be granted all powers necessary to locate and to  
25 15 temporarily preserve and protect perpetual care trust funds,  
25 16 consumer and business assets, interment records, records of  
25 17 consumer purchases of interment rights, and records of  
25 18 consumer purchases of funeral services and funeral or cemetery  
25 19 merchandise as defined in chapter 523A. The receiver shall  
25 20 also be granted such powers as are necessary in the course of  
25 21 the receivership to temporarily preserve and protect a  
25 22 cemetery or burial site and to temporarily restore or sustain  
25 23 cemetery operations, including interments, as operating funds

25 24 or trust funds become available.

25 25 NEW SUBSECTION. 4. The commissioner may petition the

25 26 court to terminate a receivership at any time and to enter

25 27 such orders as are necessary to transfer the duty to preserve

25 28 and protect the physical integrity of the cemetery or burial

25 29 site, the interment records, and other records documenting

25 30 consumer purchases of interment rights to the applicable

25 31 governmental subdivision, as provided in section 523I.316,

25 32 subsection 3. The court shall grant the petition if following

25 33 the first one hundred twenty days of the receivership such

25 34 duty to preserve and protect cannot be reasonably assumed by a

25 35 private entity, association, or by other means.

26 1 Sec. 39. Section 523I.213, Code 2007, is amended to read

26 2 as follows:

26 3 523I.213 INSURANCE DIVISION'S ENFORCEMENT FUND.

26 4 A special revenue fund in the state treasury, to be known

26 5 as the insurance division's enforcement fund, is created under

26 6 the authority of the commissioner. The commissioner shall

26 7 allocate annually from the ~~audit examination~~ fees paid

26 8 pursuant to section 523I.808, an amount not exceeding fifty

26 9 thousand dollars, for deposit to the insurance division's

26 10 enforcement fund. The moneys in the enforcement fund shall be

26 11 retained in the fund. The moneys are appropriated and,

26 12 subject to authorization by the commissioner, shall be used to

26 13 pay ~~auditors, audit examiners, examination~~ expenses,

26 14 investigative expenses, the expenses of consumer education,

26 15 compliance, and education programs for filers and other

26 16 regulated persons, and educational or compliance program

26 17 materials, the expenses of a toll-free telephone line for

26 18 consumer complaints, and the expenses of receiverships of

26 19 perpetual care cemeteries established under section 523I.212.

26 20 Sec. 40. NEW SECTION. 523I.213A EXAMINATIONS ==

26 21 AUTHORITY AND SCOPE.

26 22 1. The commissioner or the commissioner's designee may

26 23 conduct an examination under this chapter of any cemetery as

26 24 often as the commissioner deems appropriate. If a cemetery

26 25 has a trust arrangement, the commissioner shall conduct an

26 26 examination not less than once every five years.

26 27 2. A cemetery shall reimburse the division for the expense

26 28 of conducting the examination unless the commissioner waives

26 29 this requirement. The expense of an examination involving

26 30 multiple cemeteries or other persons shall be prorated among

26 31 them upon any reasonable basis as determined by the

26 32 commissioner.

26 33 3. For purposes of completing an examination pursuant to

26 34 this chapter, the commissioner may examine or investigate any

26 35 person, or the business of any person, if the examination or

27 1 investigation is, in the sole discretion of the commissioner,

27 2 necessary or material to the examination of the cemetery.

27 3 4. Upon determining that an examination should be

27 4 conducted, the commissioner or the commissioner's designee may

27 5 appoint one or more examiners to perform the examination and

27 6 instruct them as to the scope of the examination.

27 7 5. A cemetery or person from whom information is sought,

27 8 and its officers, directors, and agents shall provide to the

27 9 examiners appointed under subsection 4, timely, convenient,

27 10 and free access at their offices, at all reasonable hours, to

27 11 all books, records, accounts, papers, documents, and all

27 12 electronic or other recordings related to the property,

27 13 assets, business, and affairs of the cemetery being examined

27 14 and shall facilitate the examination as much as possible. If

27 15 a cemetery, by its officers, directors, employees, or agents,

27 16 refuses to submit to an examination as provided in this

27 17 chapter, the commissioner shall immediately report the refusal

27 18 to the attorney general, who shall then immediately apply to

27 19 district court for the appointment of a receiver to administer

27 20 the final affairs of the cemetery.

27 21 6. This section shall not be construed to limit the

27 22 commissioner's authority to terminate or suspend any

27 23 examination in order to pursue other legal or regulatory

27 24 actions pursuant to this chapter. Findings of fact and

27 25 conclusions made pursuant to an examination are deemed to be

27 26 prima facie evidence in any legal or regulatory action.

27 27 Sec. 41. NEW SECTION. 523I.213B VENUE.

27 28 All actions relating to the enforcement of this chapter

27 29 shall be governed by the laws of the state of Iowa. Venue of

27 30 any action relating to enforcement of this chapter may be in a

27 31 court of competent jurisdiction in Polk county, at the

27 32 discretion of the commissioner.

27 33 Sec. 42. Section 523I.305, subsection 3, Code 2007, is

27 34 amended to read as follows:



27 35 3. SPECIFICATIONS. Upon request, a cemetery shall provide  
28 1 reasonable written specifications and instructions governing  
28 2 installation of memorials, which shall apply to all  
28 3 installations whether performed by the cemetery or another  
28 4 person. The written specifications shall include provisions  
28 5 governing hours of installation or any other relevant  
28 6 administrative requirements of the cemetery. A copy of these  
28 7 specifications and instructions shall be provided upon  
28 8 request, without charge, to the owner of the interment space,  
28 9 next of kin, or a personal representative or agent of the  
28 10 owner, including the person installing the memorial. The  
28 11 person installing the memorial shall comply with the  
28 12 cemetery's written installation specifications and  
28 13 instructions. In order to verify that a memorial is installed  
28 14 on the proper interment space in accordance with cemetery  
28 15 rules and regulations, the cemetery shall mark the place on  
28 16 the interment space where the memorial is to be installed and  
28 17 shall inspect the installation when completed. This  
28 18 subsection shall not be construed to require that a cemetery  
28 19 lay out or engineer an interment space for the installation of  
28 20 a memorial. A cemetery shall not adopt or enforce any rule  
28 21 prohibiting the installation of a memorial by a memorial  
28 22 dealer or independent third party, unless the rule is ~~adopted~~  
28 23 applicable to all memorials from whatever source obtained and  
28 24 enforced uniformly for all memorials installed in the  
28 25 cemetery.

28 26 Sec. 43. NEW SECTION. 523I.314A STANDARDS FOR INTERMENT  
28 27 SPACES.

28 28 1. A standard interment space for full body interment  
28 29 developed on or after July 1, 2007, shall measure at least  
28 30 forty inches in width and ninety-six inches in length.

28 31 2. Prior to the sale of interment rights in an undeveloped  
28 32 area of a cemetery, internal reference markers shall be  
28 33 installed and maintained no more than one hundred feet apart.  
28 34 The internal reference markers shall be established with  
28 35 reference to survey markers that are no more than two hundred  
29 1 feet apart, have been set by a surveyor and mapper, and have  
29 2 been documented in a land survey. Both the map and the land  
29 3 survey shall be maintained by the cemetery and made available  
29 4 upon request to the commissioner and to members of the public.

29 5 Sec. 44. Section 523I.808, Code 2007, is amended to read  
29 6 as follows:

29 7 523I.808 ~~AUDIT~~ EXAMINATION FEE.

29 8 An ~~audit~~ examination fee shall be submitted with the  
29 9 cemetery's annual report in an amount equal to five dollars  
29 10 for each certificate of interment rights issued during the  
29 11 fiscal year covered by the report. The cemetery may charge  
29 12 the ~~audit~~ examination fee directly to the purchaser of the  
29 13 interment rights.

29 14 Sec. 45. Section 523I.810, subsection 9, Code 2007, is  
29 15 amended to read as follows:

29 16 9. A cemetery may, by resolution adopted by a vote of at  
29 17 least two-thirds of the members of its board at any authorized  
29 18 meeting of the board, authorize the withdrawal and use of not  
29 19 more than twenty percent of the principal of the care fund to  
29 20 acquire additional land for cemetery purposes, to repair a  
29 21 mausoleum or other building or structure intended for cemetery  
29 22 purposes, ~~or~~ to build, improve, or repair roads and walkways  
29 23 in the cemetery, or to purchase recordkeeping software used to  
29 24 maintain ownership records or interment records. The

29 25 resolution shall establish a reasonable repayment schedule,  
29 26 not to exceed five years, and provide for interest in an  
29 27 amount comparable to the care fund's current rate of return on  
29 28 its investments. However, the care fund shall not be  
29 29 diminished below an amount equal to the greater of twenty-five  
29 30 thousand dollars or five thousand dollars per acre of land in  
29 31 the cemetery. The resolution, and either a bond or proof of  
29 32 insurance to guarantee replenishment of the care fund, shall  
29 33 be filed with the commissioner thirty days prior to the  
29 34 withdrawal of funds.

29 35 Sec. 46. Section 523I.813, subsection 1, Code 2007, is  
30 1 amended by striking the subsection and inserting in lieu  
30 2 thereof the following:

30 3 1. A perpetual care cemetery shall file an annual report  
30 4 at the end of each fiscal year of the cemetery.

30 5 Sec. 47. Section 523I.813, Code 2007, is amended by adding  
30 6 the following new subsection:

30 7 NEW SUBSECTION. 3. The commissioner shall levy an  
30 8 administrative penalty in the amount of five hundred dollars  
30 9 against a cemetery that fails to file the annual report when  
30 10 due, payable to the state for deposit in the general fund of

30 11 the state.

30 12 DIVISION II

30 13 COORDINATING AMENDMENTS

30 14 Sec. 48. Section 523A.102, subsection 9, paragraphs b and  
30 15 c, Code 2007, are amended to read as follows:

30 16 b. If authorized by a purchaser under a purchase  
30 17 agreement, cemetery merchandise has been permanently  
30 18 identified with the name of the purchaser or the beneficiary  
30 19 and delivered to a bonded warehouse or storage facility  
30 20 approved by the commissioner and both title to the merchandise  
30 21 and a warehouse receipt have been delivered to the purchaser  
30 22 or beneficiary and a copy of the warehouse receipt has been  
30 23 delivered to the ~~establishment~~ seller for retention in its  
30 24 files.

30 25 c. If authorized by a purchaser under a purchase  
30 26 agreement, a polystyrene or polypropylene outer burial  
30 27 container has been permanently identified with the name of the  
30 28 purchaser or the beneficiary and delivered to a bonded  
30 29 warehouse or storage facility approved by the commissioner and  
30 30 both title to the merchandise and a warehouse receipt have  
30 31 been delivered to the purchaser or beneficiary and a copy of  
30 32 the warehouse receipt has been delivered to the ~~establishment~~  
30 33 seller for retention in its files.

30 34 Sec. 49. Section 523A.102, subsection 21, Code 2007, is  
30 35 amended to read as follows:

31 1 21. "Parent company" means a corporation that has a  
31 2 controlling interest in ~~an establishment~~ a seller.

31 3 Sec. 50. Section 523A.205, subsection 1, Code 2007, is  
31 4 amended to read as follows:

31 5 1. A financial institution shall file with the  
31 6 commissioner not later than March 1 of each year an annual  
31 7 report on a form prescribed by the commissioner showing all  
31 8 funds deposited by ~~an establishment~~ a seller under a trust  
31 9 agreement during the previous year. Each report shall contain  
31 10 all information requested.

31 11 Sec. 51. Section 523A.401, subsection 5, paragraphs a and  
31 12 b, Code 2007, are amended to read as follows:

31 13 a. Except as necessary and appropriate to satisfy the  
31 14 requirements regarding burial trust funds under Title XIX of  
31 15 the federal Social Security Act, the policy shall not be owned  
31 16 by the ~~establishment~~ seller, the policy shall not be  
31 17 irrevocably assigned to the ~~establishment~~ seller, and the  
31 18 assignment of proceeds from the insurance policy to the  
31 19 ~~establishment~~ seller shall be limited to the ~~establishment's~~  
31 20 seller's interests as they appear in the purchase agreement,  
31 21 and conditioned on the ~~establishment's~~ seller's delivery of  
31 22 cemetery merchandise, funeral merchandise, and funeral  
31 23 services pursuant to a purchase agreement.

31 24 b. The policy shall provide that any assignment of  
31 25 benefits is contingent upon the ~~establishment's~~ seller's  
31 26 delivery of cemetery merchandise, funeral merchandise, and  
31 27 funeral services pursuant to a purchase agreement.

31 28 Sec. 52. Section 523A.401, subsection 6, unnumbered  
31 29 paragraph 1, Code 2007, is amended to read as follows:

31 30 With the written consent of the purchaser, an existing  
31 31 prepaid purchase agreement with trust-funded benefits may be  
31 32 converted to a prepaid purchase agreement with  
31 33 insurance-funded benefits provided the ~~establishment~~ seller  
31 34 and the insurance benefits comply with the following  
31 35 provisions:

32 1 Sec. 53. Section 523A.401, subsection 6, paragraph d, Code  
32 2 2007, is amended to read as follows:

32 3 d. The ~~establishment~~ seller shall maintain a copy of any  
32 4 prepaid trust-funded purchase agreement that was converted to  
32 5 a prepaid insurance-funded purchase agreement and retain the  
32 6 payment history records for each converted purchase agreement  
32 7 prior to conversion until the cemetery merchandise, funeral  
32 8 merchandise, and funeral services have been delivered.

32 9 Sec. 54. Section 523A.401, subsection 8, Code 2007, is  
32 10 amended to read as follows:

32 11 8. An insurance company issuing policies funding purchase  
32 12 agreements subject to this chapter shall file an annual report  
32 13 with the commissioner on a form prescribed by the  
32 14 commissioner. The report shall list the applicable insurance  
32 15 policies outstanding for each ~~establishment~~ seller. Computer  
32 16 printouts may be submitted so long as each legibly provides  
32 17 the same information required in the prescribed form.

32 18 Sec. 55. Section 523A.402, subsection 5, paragraphs a and  
32 19 b, Code 2007, are amended to read as follows:

32 20 a. Except as necessary and appropriate to satisfy the  
32 21 requirements regarding burial trust funds under Title XIX of

32 22 the federal Social Security Act, the annuity shall not be  
32 23 owned by the ~~establishment seller~~ or irrevocably assigned to  
32 24 the ~~establishment seller~~ and any designation of the  
32 25 ~~establishment seller~~ as a beneficiary shall not be made  
32 26 irrevocable.

32 27 b. The annuity shall provide that any assignment of  
32 28 benefits is contingent upon the ~~establishment's seller's~~  
32 29 delivery of cemetery merchandise, funeral merchandise, and  
32 30 funeral services pursuant to a purchase agreement.

32 31 Sec. 56. Section 523A.402, subsection 6, unnumbered  
32 32 paragraph 1, Code 2007, is amended to read as follows:  
32 33 With the written consent of the purchaser, an existing  
32 34 prepaid purchase agreement with trust=funded benefits may be  
32 35 converted to a prepaid purchase agreement with annuity=funded  
33 1 benefits provided the ~~establishment seller~~ and the annuity  
33 2 benefits comply with the following provisions:  
33 3 Sec. 57. Section 523A.402, subsection 6, paragraph d, Code  
33 4 2007, is amended to read as follows:  
33 5 d. The ~~establishment seller~~ shall maintain a copy of any  
33 6 prepaid trust=funded purchase agreement that was converted to  
33 7 a prepaid annuity=funded purchase agreement and retain the  
33 8 payment history records for each converted purchase agreement  
33 9 prior to conversion until the cemetery merchandise, funeral  
33 10 merchandise, and funeral services have been delivered.

33 11 Sec. 58. Section 523A.402, subsection 8, Code 2007, is  
33 12 amended to read as follows:  
33 13 8. An insurance company issuing annuities funding purchase  
33 14 agreements subject to this chapter shall file an annual report  
33 15 with the commissioner on a form prescribed by the  
33 16 commissioner. The report shall list the applicable annuities  
33 17 outstanding for each ~~establishment seller~~. Computer printouts  
33 18 may be submitted so long as each legibly provides the same  
33 19 information required in the prescribed form.

33 20 Sec. 59. Section 523A.404, subsection 4, Code 2007, is  
33 21 amended to read as follows:  
33 22 4. ~~An establishment A seller~~ is prohibited from requiring  
33 23 delivery as a condition of the sale.

33 24 Sec. 60. Section 523A.405, subsection 9, unnumbered  
33 25 paragraph 1, Code 2007, is amended to read as follows:  
33 26 With the consent of the purchaser, an existing prepaid  
33 27 purchase agreement with trust=funded benefits may be converted  
33 28 to a prepaid purchase agreement funded by a surety bond  
33 29 provided the ~~establishment seller~~ and the surety bond comply  
33 30 with the following provisions:  
33 31 Sec. 61. Section 523A.405, subsection 9, paragraph c, Code  
33 32 2007, is amended to read as follows:  
33 33 c. The ~~establishment seller~~ shall maintain a copy of any  
33 34 prepaid trust=funded agreement that was converted to a prepaid  
33 35 purchase agreement funded by a surety bond and retain the  
34 1 payment history records for each converted purchase agreement  
34 2 prior to conversion until the cemetery merchandise, funeral  
34 3 merchandise, and funeral services have been delivered.

34 4 Sec. 62. Section 523A.601, subsection 2, paragraph e, Code  
34 5 2007, is amended to read as follows:  
34 6 e. State clearly that the purchaser is entitled to  
34 7 transfer the trust funding, insurance funding, or other trust  
34 8 assets or select another ~~establishment seller~~ to receive the  
34 9 trust funding, insurance funding, or any other trust assets.

34 10 Sec. 63. Section 523A.601, subsection 5, paragraph h, Code  
34 11 2007, is amended to read as follows:  
34 12 h. If the funding is being transferred from another  
34 13 ~~establishment seller~~, any material facts related to the  
34 14 revocation of the prior purchase agreement and the transfer of  
34 15 the existing trust funds.

34 16 Sec. 64. Section 523A.602, subsection 2, paragraph b,  
34 17 subparagraphs (1) and (2), Code 2007, are amended to read as  
34 18 follows:  
34 19 (1) If a purchase agreement is canceled, a purchaser  
34 20 requests a transfer of the trust assets upon cancellation of a  
34 21 purchase agreement, or another ~~establishment seller~~ provides  
34 22 merchandise or services designated in a purchase agreement,  
34 23 the seller shall refund or transfer within thirty days of  
34 24 receiving a written demand no less than the purchase price of  
34 25 the applicable cemetery merchandise, funeral merchandise, and  
34 26 funeral services adjusted for inflation, using the consumer  
34 27 price index amounts announced by the commissioner annually,  
34 28 less any actual expenses incurred by the seller pursuant to  
34 29 the purchase agreement as set forth in the purchase agreement  
34 30 under section 523A.601, subsection 1, paragraph "f". The  
34 31 amount of the actual expenses deducted by the seller shall not  
34 32 exceed ten percent of the purchase price of the applicable

34 33 cemetery merchandise, funeral merchandise, and funeral  
34 34 services. The seller may also deduct the value of the  
34 35 cemetery merchandise, funeral merchandise, and funeral  
35 1 services already received by, delivered to, or warehoused for  
35 2 the purchaser.

35 3 (2) If a purchase agreement is canceled before the  
35 4 purchase price is paid in full, a purchaser requests a  
35 5 transfer of the trust assets upon cancellation of a purchase  
35 6 agreement before the purchase price is paid in full, or  
35 7 another ~~establishment~~ seller provides cemetery merchandise,  
35 8 funeral merchandise, funeral services, or a combination  
35 9 thereof, designated in a purchase agreement before the  
35 10 purchase price is paid in full, the seller shall refund or  
35 11 transfer within thirty days of receiving a written demand no  
35 12 less than the amount paid by the purchaser, less any actual  
35 13 expenses incurred by the seller pursuant to the purchase  
35 14 agreement as set forth in the purchase agreement under section  
35 15 523A.601, subsection 1, paragraph "f". The amount of the  
35 16 actual expenses deducted by the seller shall not exceed ten  
35 17 percent of the total original purchase price of the applicable  
35 18 cemetery merchandise, funeral merchandise, funeral services,  
35 19 or a combination thereof. The seller may also deduct the  
35 20 value of the cemetery merchandise, funeral merchandise, and  
35 21 funeral services already received by, delivered to, or  
35 22 warehoused for the purchaser.

35 23 Sec. 65. Section 523A.602, subsection 2, paragraph b,  
35 24 subparagraph (3), unnumbered paragraph 1, Code 2007, is  
35 25 amended to read as follows:

35 26 For the purposes of this paragraph "b", "actual expenses"  
35 27 means all reasonable business expenses of ~~an establishment a~~  
35 28 seller that are associated with the sale of cemetery  
35 29 merchandise, funeral merchandise, funeral services, or a  
35 30 combination thereof. "Actual expenses" includes but is not  
35 31 limited to the following:

35 32 Sec. 66. Section 523A.602, subsection 2, paragraph b,  
35 33 subparagraph (3), subparagraph subdivisions (d) and (g), Code  
35 34 2007, are amended to read as follows:

35 35 (d) Licensing fees of the ~~establishment~~ seller.

36 1 (g) Expenses related to employees of the ~~establishment~~  
36 2 seller such as licensing fees, continuing education, and  
36 3 salaries and commissions.

36 4 Sec. 67. Section 523A.802, subsection 1, Code 2007, is  
36 5 amended to read as follows:

36 6 1. This chapter applies to any advertisement, sale,  
36 7 promotion, or offer made by a person to furnish, upon the  
36 8 future death of a person named or implied in a purchase  
36 9 agreement, cemetery merchandise, funeral merchandise, funeral  
36 10 services, or a combination thereof. Burial accounts and  
36 11 insurance policies are included if the account records or  
36 12 related documents identify the ~~establishment~~ seller that will  
36 13 provide the cemetery merchandise, funeral merchandise, funeral  
36 14 services, or a combination thereof.

36 15 Sec. 68. Section 523A.803, subsection 1, paragraph d, Code  
36 16 2007, is amended to read as follows:

36 17 d. Investigate the ~~establishment~~ seller and examine the  
36 18 books, accounts, papers, correspondence, memoranda, purchase  
36 19 agreements, files, or other documents or records used by every  
36 20 applicant and ~~permit holder~~ licensee under this chapter.

36 21 Sec. 69. Section 523A.804, unnumbered paragraph 1, Code  
36 22 2007, is amended to read as follows:

36 23 The commissioner may order ~~an establishment a~~ seller to  
36 24 participate in mediation in any dispute regarding a purchase  
36 25 agreement. Mediation performed under this section shall be  
36 26 conducted by a mediator appointed by the commissioner and  
36 27 shall comply with the provisions of chapter 679C.

36 28 Sec. 70. Section 523A.806, subsection 2, Code 2007, is  
36 29 amended to read as follows:

36 30 2. Revocation or suspension of any ~~permit~~ license issued  
36 31 under this chapter.

36 32 Sec. 71. Section 523A.901, subsection 1, Code 2007, is  
36 33 amended to read as follows:

36 34 1. GROUNDS FOR LIQUIDATION. The commissioner may petition  
36 35 the district court for an order directing the commissioner to  
37 1 liquidate ~~an establishment~~ the business of a seller on either  
37 2 of the following grounds:

37 3 a. The ~~establishment~~ seller did not deposit funds pursuant  
37 4 to section 523A.201 or withdrew funds in a manner inconsistent  
37 5 with this chapter and is insolvent.

37 6 b. The ~~establishment~~ seller did not deposit funds pursuant  
37 7 to section 523A.201 or withdrew funds in a manner inconsistent  
37 8 with this chapter and the condition of the ~~establishment~~



37 9 seller is such that further transaction of business would be  
37 10 hazardous, financially or otherwise, to purchasers or the  
37 11 public.

37 12 Sec. 72. Section 523A.901, subsection 2, paragraphs a, b,  
37 13 c, and e, Code 2007, are amended to read as follows:

37 14 a. An order to liquidate the business of ~~an establishment~~  
37 15 a seller shall appoint the commissioner as liquidator and  
37 16 shall direct the liquidator to immediately take possession of  
37 17 the assets of the ~~establishment seller~~ and to administer them  
37 18 under the general supervision of the court. The liquidator is  
37 19 vested with the title to the property, contracts, and rights  
37 20 of action and the books and records of the ~~establishment~~  
37 21 seller ordered liquidated, wherever located, as of the entry  
37 22 of the final order of liquidation. The filing or recording of  
37 23 the order with the clerk of court and the recorder of deeds of  
37 24 the county in which its principal office or place of business  
37 25 is located, or in the case of real estate, with the recorder  
37 26 of deeds of the county where the property is located, is  
37 27 notice as a deed, bill of sale, or other evidence of title  
37 28 duly filed or recorded with the recorder of deeds.

37 29 b. Upon issuance of an order, the rights and liabilities  
37 30 of ~~an establishment a seller~~ and of the ~~establishment's~~  
37 31 seller's creditors, purchasers, owners, and other persons  
37 32 interested in the ~~establishment's seller's~~ estate shall become  
37 33 fixed as of the date of the entry of the order of liquidation,  
37 34 except as provided in subsection 14.

37 35 c. At the time of petitioning for an order of liquidation,  
38 1 or at any time after the time of petitioning, the  
38 2 commissioner, after making appropriate findings of ~~an~~  
38 3 ~~establishment's a seller's~~ insolvency, may petition the court  
38 4 for a declaration of insolvency. After providing notice and  
38 5 hearing as it deems proper, the court may make the  
38 6 declaration.

38 7 e. Within five days after the initiation of an appeal of  
38 8 an order of liquidation, which order has not been stayed, the  
38 9 commissioner shall present for the court's approval a plan for  
38 10 the continued performance of the ~~establishment's seller's~~  
38 11 obligations during the pendency of an appeal. The plan shall  
38 12 provide for the continued performance of purchase agreements  
38 13 in the normal course of events, notwithstanding the grounds  
38 14 alleged in support of the order of liquidation including the  
38 15 ground of insolvency. If the defendant ~~establishment's~~  
38 16 seller's financial condition, in the judgment of the  
38 17 commissioner, will not support the full performance of all  
38 18 obligations during the appeal pendency period, the plan may  
38 19 prefer the claims of certain purchasers and claimants over  
38 20 creditors and interested parties as well as other purchasers  
38 21 and claimants, as the commissioner finds to be fair and  
38 22 equitable considering the relative circumstances of such  
38 23 purchasers and claimants. The court shall examine the plan  
38 24 submitted by the commissioner and if it finds the plan to be  
38 25 in the best interests of the parties, the court shall approve  
38 26 the plan. An action shall not lie against the commissioner or  
38 27 any of the commissioner's deputies, agents, clerks,  
38 28 assistants, or attorneys by any party based on preference in  
38 29 an appeal pendency plan approved by the court.

38 30 Sec. 73. Section 523A.901, subsection 3, paragraph a,  
38 31 subparagraphs (4), (6), (7), (8), (9), (10), (11), (12), (13),  
38 32 (14), (17), and (18), Code 2007, are amended to read as  
38 33 follows:

38 34 (4) Pay reasonable compensation to persons appointed and  
38 35 defray from the funds or assets of the ~~establishment seller~~  
39 1 all expenses of taking possession of, conserving, conducting,  
39 2 liquidating, disposing of, or otherwise dealing with the  
39 3 business and property of the ~~establishment seller~~. If the  
39 4 property of the ~~establishment seller~~ does not contain  
39 5 sufficient cash or liquid assets to defray the costs incurred,  
39 6 the commissioner may advance the costs so incurred out of the  
39 7 insurance division regulatory fund. Amounts so advanced for  
39 8 expenses of administration shall be repaid to the insurance  
39 9 division regulatory fund for the use of the division out of  
39 10 the first available moneys of the ~~establishment seller~~.

39 11 (6) Collect debts and moneys due and claims belonging to  
39 12 the ~~establishment seller~~, wherever located. Pursuant to this  
39 13 subparagraph, the liquidator may do any of the following:

39 14 (a) Institute timely action in other jurisdictions to  
39 15 forestall garnishment and attachment proceedings against  
39 16 debts.

39 17 (b) Perform acts as are necessary or expedient to collect,  
39 18 conserve, or protect its assets or property, including the  
39 19 power to sell, compound, compromise, or assign debts for

39 20 purposes of collection upon terms and conditions as the  
39 21 liquidator deems best.

39 22 (c) Pursue any creditor's remedies available to enforce  
39 23 claims.

39 24 (7) Conduct public and private sales of the property of  
39 25 the ~~establishment seller~~.

39 26 (8) Use assets of the ~~establishment seller~~ under a  
39 27 liquidation order to transfer obligations of purchase  
39 28 agreements to a solvent ~~establishment seller~~, if the transfer  
39 29 can be accomplished without prejudice to the applicable  
39 30 priorities under subsection 18.

39 31 (9) Acquire, hypothecate, encumber, lease, improve, sell,  
39 32 transfer, abandon, or otherwise dispose of or deal with  
39 33 property of the ~~establishment seller~~ at its market value or  
39 34 upon terms and conditions as are fair and reasonable. The  
39 35 liquidator shall also have power to execute, acknowledge, and  
40 1 deliver deeds, assignments, releases, and other instruments  
40 2 necessary to effectuate a sale of property or other  
40 3 transaction in connection with the liquidation.

40 4 (10) Borrow money on the security of the ~~establishment's~~  
40 5 ~~seller's~~ assets or without security and execute and deliver  
40 6 documents necessary to that transaction for the purpose of  
40 7 facilitating the liquidation. Money borrowed pursuant to this  
40 8 subparagraph shall be repaid as an administrative expense and  
40 9 shall have priority over any other class 1 claims under the  
40 10 priority of distribution established in subsection 18.

40 11 (11) Enter into contracts as necessary to carry out the  
40 12 order to liquidate and affirm or disavow contracts to which  
40 13 the ~~establishment seller~~ is a party.

40 14 (12) Continue to prosecute and to institute in the name of  
40 15 the ~~establishment seller~~ or in the liquidator's own name any  
40 16 and all suits and other legal proceedings, in this state or  
40 17 elsewhere, and to abandon the prosecution of claims the  
40 18 liquidator deems unprofitable to pursue further.

40 19 (13) Prosecute an action on behalf of the creditors,  
40 20 purchasers, or owners against an officer of the ~~establishment~~  
40 21 ~~seller~~ or any other person.

40 22 (14) Remove records and property of the ~~establishment~~  
40 23 ~~seller~~ to the offices of the commissioner or to other places  
40 24 as may be convenient for the purposes of efficient and orderly  
40 25 execution of the liquidation.

40 26 (17) File necessary documents for recording in the office  
40 27 of the recorder of deeds or record office in this state or  
40 28 elsewhere where property of the ~~establishment seller~~ is  
40 29 located.

40 30 (18) Assert defenses available to the ~~establishment seller~~  
40 31 against third persons including statutes of limitations,  
40 32 statutes of fraud, and the defense of usury. A waiver of a  
40 33 defense by the ~~establishment seller~~ after a petition in  
40 34 liquidation has been filed shall not bind the liquidator.

40 35 Sec. 74. Section 523A.901, subsection 4, paragraph a,  
41 1 subparagraphs (1) and (2), Code 2007, are amended to read as  
41 2 follows:

41 3 (1) Mailing notice, by first-class mail, to all persons  
41 4 known or reasonably expected to have claims against the  
41 5 ~~establishment seller~~, including purchasers, at their last  
41 6 known address as indicated by the records of the ~~establishment~~  
41 7 ~~seller~~.

41 8 (2) Publication of notice in a newspaper of general  
41 9 circulation in the county in which the ~~establishment seller~~  
41 10 has its principal place of business and in other locations as  
41 11 the liquidator deems appropriate.

41 12 Sec. 75. Section 523A.901, subsection 4, paragraph c, Code  
41 13 2007, is amended to read as follows:

41 14 c. If notice is given pursuant to this subsection, the  
41 15 distribution of assets of the ~~establishment seller~~ under this  
41 16 chapter shall be conclusive with respect to claimants, whether  
41 17 or not a claimant actually received notice.

41 18 Sec. 76. Section 523A.901, subsection 5, Code 2007, is  
41 19 amended to read as follows:

41 20 5. ACTIONS BY AND AGAINST LIQUIDATOR.

41 21 a. After issuance of an order appointing a liquidator of  
41 22 ~~an establishment the business of a seller~~, an action at law or  
41 23 equity shall not be brought against the ~~establishment seller~~  
41 24 within this state or elsewhere, and existing actions shall not  
41 25 be maintained or further presented after issuance of the  
41 26 order. Whenever in the liquidator's judgment, protection of  
41 27 the estate of the ~~establishment seller~~ necessitates  
41 28 intervention in an action against the ~~establishment seller~~  
41 29 that is pending outside this state, the liquidator may  
41 30 intervene in the action. The liquidator may defend, at the

41 31 expense of the estate of the ~~establishment seller~~, an action  
41 32 in which the liquidator intervenes under this section.

41 33 b. Within two years or such additional time as applicable  
41 34 law may permit, the liquidator, after the issuance of an order  
41 35 for liquidation, may institute an action or proceeding on  
42 1 behalf of the estate of the ~~establishment seller~~ upon any  
42 2 cause of action against which the period of limitation fixed  
42 3 by applicable law has not expired at the time of the filing of  
42 4 the petition upon which the order is entered. If a period of  
42 5 limitation is fixed by agreement for instituting a suit or  
42 6 proceeding upon a claim, or for filing a claim, proof of  
42 7 claim, proof of loss, demand, notice, or the like, or if in a  
42 8 proceeding, judicial or otherwise, a period of limitation is  
42 9 fixed in the proceeding or pursuant to applicable law for  
42 10 taking an action, filing a claim or pleading, or doing an act,  
42 11 and if the period has not expired at the date of the filing of  
42 12 the petition, the liquidator may, for the benefit of the  
42 13 estate, take any action or do any act, required of or  
42 14 permitted to the ~~establishment seller~~, within a period of one  
42 15 hundred eighty days subsequent to the entry of an order for  
42 16 liquidation, or within a further period as is shown to the  
42 17 satisfaction of the court not to be unfairly prejudicial to  
42 18 the other party.

42 19 c. A statute of limitations or defense of laches shall not  
42 20 run with respect to an action against ~~an establishment a~~  
42 21 ~~seller~~ between the filing of a petition for liquidation  
42 22 against the ~~establishment business of a seller~~ and the denial  
42 23 of the petition. An action against the ~~establishment seller~~  
42 24 that might have been commenced when the petition was filed may  
42 25 be commenced within sixty days after the petition is denied.

42 26 Sec. 77. Section 523A.901, subsection 6, paragraph a, Code  
42 27 2007, is amended to read as follows:

42 28 a. As soon as practicable after the liquidation order but  
42 29 not later than one hundred twenty days after such order, the  
42 30 liquidator shall prepare in duplicate a list of the  
42 31 ~~establishment's seller's~~ assets. The list shall be amended or  
42 32 supplemented as the liquidator may determine. One copy shall  
42 33 be filed in the office of the clerk of court, and one copy  
42 34 shall be retained for the liquidator's files. Amendments and  
42 35 supplements shall be similarly filed.

43 1 Sec. 78. Section 523A.901, subsection 7, paragraph a, Code  
43 2 2007, is amended to read as follows:

43 3 a. A transfer made and an obligation incurred by ~~an~~  
43 4 ~~establishment a seller whose business is~~ within one year prior  
43 5 to the filing of a successful petition for liquidation under  
43 6 this chapter is fraudulent as to then existing and future  
43 7 creditors if made or incurred without fair consideration, or  
43 8 with actual intent to hinder, delay, or defraud either  
43 9 existing or future creditors. A fraudulent transfer made or  
43 10 an obligation incurred by ~~an establishment a seller whose~~  
43 11 ~~business is~~ ordered to be liquidated under this chapter may be  
43 12 avoided by the liquidator, except as to a person who in good  
43 13 faith is a purchaser, lienor, or obligee for a present fair  
43 14 equivalent value. A purchaser, lienor, or obligee, who in  
43 15 good faith has given a consideration less than present fair  
43 16 equivalent value for such transfer, lien, or obligation, may  
43 17 retain the property, lien, or obligation as security for  
43 18 repayment. The court may, on due notice, order any such  
43 19 transfer, lien, or obligation to be preserved for the benefit  
43 20 of the estate, and in that event, the receiver shall succeed  
43 21 to and may enforce the rights of the purchaser, lienor, or  
43 22 obligee.

43 23 Sec. 79. Section 523A.901, subsection 7, paragraph b,  
43 24 subparagraph (2), Code 2007, is amended to read as follows:

43 25 (2) A transfer of real property is made when it becomes  
43 26 perfected so that a subsequent bona fide purchaser from the  
43 27 ~~establishment seller~~ could not obtain rights superior to the  
43 28 rights of the transferee.

43 29 Sec. 80. Section 523A.901, subsection 8, paragraphs a, b,  
43 30 and c, Code 2007, are amended to read as follows:

43 31 a. After a petition for liquidation has been filed, a  
43 32 transfer of real property of the ~~establishment seller~~ made to  
43 33 a person acting in good faith is valid against the liquidator  
43 34 if made for a present fair equivalent value. If the transfer  
43 35 is not made for a present fair equivalent value, then the  
44 1 transfer is valid to the extent of the present consideration  
44 2 actually paid for which amount the transferee shall have a  
44 3 lien on the property transferred. The commencement of a  
44 4 proceeding in liquidation is constructive notice upon the  
44 5 recording of a copy of the petition for or order of  
44 6 liquidation with the recorder of deeds in the county where any

44 7 real property in question is located. The exercise by a court  
44 8 of the United States or a state or jurisdiction to authorize a  
44 9 judicial sale of real property of the ~~establishment seller~~  
44 10 within a county in a state shall not be impaired by the  
44 11 pendency of a proceeding unless the copy is recorded in the  
44 12 county prior to the consummation of the judicial sale.

44 13 b. After a petition for liquidation has been filed and  
44 14 before either the liquidator takes possession of the property  
44 15 of the ~~establishment seller~~ or an order of liquidation is  
44 16 granted:

44 17 (1) A transfer of the property, other than real property,  
44 18 of the ~~establishment seller~~ made to a person acting in good  
44 19 faith is valid against the liquidator if made for a present  
44 20 fair equivalent value. If the transfer was not made for a  
44 21 present fair equivalent value, then the transfer is valid to  
44 22 the extent of the present consideration actually paid for  
44 23 which amount the transferee shall have a lien on the property  
44 24 transferred.

44 25 (2) If acting in good faith, a person indebted to the  
44 26 ~~establishment seller~~ or holding property of the ~~establishment~~  
44 27 ~~seller~~ may pay the debt or deliver the property, or any part  
44 28 of the property, to the ~~establishment seller~~ or upon the  
44 29 ~~establishment's seller's~~ order as if the petition were not  
44 30 pending.

44 31 (3) A person having actual knowledge of the pending  
44 32 liquidation is not acting in good faith.

44 33 (4) A person asserting the validity of a transfer under  
44 34 this subsection has the burden of proof. Except as provided  
44 35 in this subsection, a transfer by or on behalf of the  
45 1 ~~establishment seller~~ after the date of the petition for  
45 2 liquidation by any person other than the liquidator is not  
45 3 valid against the liquidator.

45 4 c. A person receiving any property from the ~~establishment~~  
45 5 ~~seller~~ or any benefit of the property of the ~~establishment~~  
45 6 ~~seller~~ which is a fraudulent transfer under paragraph "a" is  
45 7 personally liable for the property or benefit and shall  
45 8 account to the liquidator.

45 9 Sec. 81. Section 523A.901, subsection 9, paragraph a,  
45 10 subparagraphs (1) and (2), Code 2007, are amended to read as  
45 11 follows:

45 12 (1) A preference is a transfer of the property of ~~an~~  
45 13 ~~establishment a seller~~ to or for the benefit of a creditor for  
45 14 an antecedent debt made or suffered by the ~~establishment~~  
45 15 ~~seller~~ within one year before the filing of a successful  
45 16 petition for liquidation under this chapter, the effect of  
45 17 which transfer may be to enable the creditor to obtain a  
45 18 greater percentage of this debt than another creditor of the  
45 19 same class would receive. If a liquidation order is entered  
45 20 while the ~~establishment seller~~ is already subject to a  
45 21 receivership, then the transfers are preferences if made or  
45 22 suffered within one year before the filing of the successful  
45 23 petition for the receivership, or within two years before the  
45 24 filing of the successful petition for liquidation, whichever  
45 25 time is shorter.

45 26 (2) A preference may be avoided by the liquidator if any  
45 27 of the following exist:

45 28 (a) The ~~establishment seller~~ was insolvent at the time of  
45 29 the transfer.

45 30 (b) The transfer was made within four months before the  
45 31 filing of the petition.

45 32 (c) At the time the transfer was made, the creditor  
45 33 receiving it or to be benefited by the transfer or the  
45 34 creditor's agent acting with reference to the transfer had  
45 35 reasonable cause to believe that the ~~establishment seller~~ was  
46 1 insolvent or was about to become insolvent.

46 2 (d) The creditor receiving the transfer was an officer, or  
46 3 an employee, attorney, or other person who was in fact in a  
46 4 position of comparable influence in the ~~establishment seller~~  
46 5 to an officer whether or not the person held the position of  
46 6 an officer, owner, or other person, firm, corporation,  
46 7 association, or aggregation of persons with whom the  
46 8 ~~establishment seller~~ did not deal at arm's length.

46 9 Sec. 82. Section 523A.901, subsection 9, paragraph b,  
46 10 subparagraph (2), Code 2007, is amended to read as follows:

46 11 (2) A transfer of real property is made when it becomes  
46 12 perfected so that a subsequent bona fide purchaser from the  
46 13 ~~establishment seller~~ could not obtain rights superior to the  
46 14 rights of the transferee.

46 15 Sec. 83. Section 523A.901, subsection 9, paragraphs e, i,  
46 16 and j, Code 2007, are amended to read as follows:

46 17 e. If a lien which is voidable under paragraph "a",



46 18 subparagraph (2), has been dissolved by the furnishing of a  
46 19 bond or other obligation, the surety of which has been  
46 20 indemnified directly or indirectly by the transfer or the  
46 21 creation of a lien upon property of ~~an establishment a seller~~  
46 22 before the filing of a petition under this chapter which  
46 23 results in the liquidation order, the indemnifying transfer or  
46 24 lien is also voidable.

46 25 i. If a creditor has been preferred for property which  
46 26 becomes a part of the ~~establishment's seller's~~ estate, and  
46 27 afterward in good faith gives the ~~establishment seller~~ further  
46 28 credit without security of any kind, the amount of the new  
46 29 credit remaining unpaid at the time of the petition may be set  
46 30 off against the preference which would otherwise be  
46 31 recoverable from the creditor.

46 32 j. If within four months before the filing of a successful  
46 33 petition for liquidation under this chapter, or at any time in  
46 34 contemplation of a proceeding to liquidate, ~~an establishment a~~  
46 35 ~~seller~~, directly or indirectly, pays money or transfers

47 1 property to an attorney for services rendered or to be  
47 2 rendered, the transaction may be examined by the court on its  
47 3 own motion or shall be examined by the court on petition of  
47 4 the liquidator. The payment or transfer shall be held valid  
47 5 only to the extent of a reasonable amount to be determined by  
47 6 the court. The excess may be recovered by the liquidator for  
47 7 the benefit of the estate. However, where the attorney is in  
47 8 a position of influence in the ~~establishment business of the~~  
47 9 ~~seller~~ or an affiliate, payment of any money or the transfer  
47 10 of any property to the attorney for services rendered or to be  
47 11 rendered shall be governed by the provisions of paragraph "a",  
47 12 subparagraph (2), subparagraph subdivision (d).

47 13 Sec. 84. Section 523A.901, subsection 9, paragraph k,  
47 14 subparagraphs (1) and (2), Code 2007, are amended to read as  
47 15 follows:

47 16 (1) An officer, manager, employee, shareholder,  
47 17 subscriber, attorney, or other person acting on behalf of the  
47 18 ~~establishment seller~~ who knowingly participates in giving any  
47 19 preference when the person has reasonable cause to believe the  
47 20 ~~establishment seller~~ is or is about to become insolvent at the  
47 21 time of the preference is personally liable to the liquidator  
47 22 for the amount of the preference. There is an inference that  
47 23 reasonable cause exists if the transfer was made within four  
47 24 months before the date of filing of this successful petition  
47 25 for liquidation.

47 26 (2) A person receiving property from the ~~establishment~~  
47 27 ~~seller~~ or the benefit of the property of the ~~establishment~~  
47 28 ~~seller~~ as a preference voidable under paragraph "a" is  
47 29 personally liable for the property and shall account to the  
47 30 liquidator.

47 31 Sec. 85. Section 523A.901, subsection 13, paragraph d,  
47 32 Code 2007, is amended to read as follows:

47 33 d. A judgment or order against ~~an establishment a seller~~  
47 34 entered after the date of filing of a successful petition for  
47 35 liquidation, or a judgment or order against the ~~establishment~~  
48 1 ~~seller~~ entered at any time by default or by collusion need not  
48 2 be considered as evidence of liability or of the amount of  
48 3 damages. A judgment or order against ~~an establishment a~~  
48 4 ~~seller~~ before the filing of the petition need not be  
48 5 considered as evidence of liability or of the amount of  
48 6 damages.

48 7 Sec. 86. Section 523A.901, subsection 16, Code 2007, is  
48 8 amended to read as follows:

48 9 16. CLAIMS OF OTHER PERSON. If a creditor, whose claim  
48 10 against ~~an establishment a seller~~ is secured in whole or in  
48 11 part by the undertaking of another person, fails to prove and  
48 12 file that claim, then the other person may do so in the  
48 13 creditor's name and shall be subrogated to the rights of the  
48 14 creditor, whether the claim has been filed by the creditor or  
48 15 by the other person in the creditor's name to the extent that  
48 16 the other person discharges the undertaking. However, in the  
48 17 absence of an agreement with the creditor to the contrary, the  
48 18 other person is not entitled to any distribution until the  
48 19 amount paid to the creditor on the undertaking plus the  
48 20 distributions paid on the claim from the ~~establishment's~~  
48 21 ~~seller's~~ estate to the creditor equal the amount of the entire  
48 22 claim of the creditor. An excess received by the creditor  
48 23 shall be held by the creditor in trust for the other person.

48 24 Sec. 87. Section 523A.901, subsection 18, unnumbered  
48 25 paragraph 1, Code 2007, is amended to read as follows:

48 26 The priority of distribution of claims from the  
48 27 ~~establishment's seller's~~ estate shall be in accordance with  
48 28 the order in which each class of claims is set forth. Claims

48 29 in each class shall be paid in full or adequate funds retained  
48 30 for the payment before the members of the next class receive  
48 31 any payment. Subclasses shall not be established within a  
48 32 class. The order of distribution of claims is as follows:  
48 33 Sec. 88. Section 523A.901, subsection 18, paragraph a,  
48 34 subparagraph (1), Code 2007, is amended to read as follows:  
48 35 (1) Actual and necessary costs of preserving or recovering  
49 1 the assets of the ~~establishment seller~~.  
49 2 Sec. 89. Section 523A.901, subsection 19, paragraph a,  
49 3 Code 2007, is amended to read as follows:  
49 4 a. The liquidator shall review claims duly filed in the  
49 5 liquidation and shall make further investigation as necessary.  
49 6 The liquidator may compound, compromise, or in any other  
49 7 manner negotiate the amount for which claims will be  
49 8 recommended to the court except where the liquidator is  
49 9 required by law to accept claims as settled by a person or  
49 10 organization. Unresolved disputes shall be determined under  
49 11 subsection 15. As soon as practicable, the liquidator shall  
49 12 present to the court a report of the claims against the  
49 13 ~~establishment seller~~ with the liquidator's recommendations.  
49 14 The report shall include the name and address of each claimant  
49 15 and the amount of the claim finally recommended.  
49 16 Sec. 90. Section 523A.901, subsection 21, paragraph b,  
49 17 Code 2007, is amended to read as follows:  
49 18 b. Funds withheld under subsection 14 and not distributed  
49 19 shall upon discharge of the liquidator be deposited with the  
49 20 treasurer of state and paid pursuant to subsection 18. Sums  
49 21 remaining which under subsection 18 would revert to the  
49 22 undistributed assets of the ~~establishment seller~~ shall be  
49 23 transferred to the insurance division regulatory fund and  
49 24 become the property of the state as provided under paragraph  
49 25 "a", unless the commissioner in the commissioner's discretion  
49 26 petitions the court to reopen the liquidation pursuant to  
49 27 subsection 23.  
49 28 Sec. 91. Section 523A.901, subsection 24, Code 2007, is  
49 29 amended to read as follows:  
49 30 24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF  
49 31 LIQUIDATION. If it appears to the commissioner that the  
49 32 records of ~~an establishment~~ the business of a seller in the  
49 33 process of liquidation or completely liquidated are no longer  
49 34 useful, the commissioner may recommend to the court and the  
49 35 court shall direct what records shall be retained for future  
50 1 reference and what records shall be destroyed.  
50 2 SF 559  
50 3 av/cc/26